

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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JUN 13 1997

Federal Communications Commission  
Office of Secretary

In the Matter of

Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast  
Service

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MM Docket No. 87-268

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION**

WGBH Educational Foundation, licensee of noncommercial, educational station WGBY-TV (Ch. 57, PBS), Springfield, Massachusetts, hereby requests, pursuant to Section 1.106 of the rules, that the Commission reconsider part of its Sixth Report and Order, (adopted April 3, 1997)("Sixth R&O").<sup>1/</sup> WGBY-TV operates in a small-market (ranked 100th), providing unique local programming and educational services as well as PBS programming to the western New England area. It is responsible for all its own fund-raising and will face significant financial challenges in converting to DTV. WGBY-TV ("WGBY") is eager to meet these challenges and confident that it can, save one -- the cost of building its DTV facilities a second time when it is required to move to the "core band" of DTV channels (that is, channels 2-46 or 7-51) after the transition to DTV. As a noncommercial station with both NTSC channel (57) and assigned DTV

<sup>1/</sup> Portions of the Sixth R&O, although not its Appendix B containing DTV channel assignments, were published in 62 Fed. Reg. 26684 (May 14, 1997). The WGBH Educational Foundation consistently has been a signatory to the Joint Broadcaster Comments filed in this proceeding.

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channel (58) outside of the core band, WGBY will be among the most severely handicapped licensees if it is not compensated for the costs of moving into the core band. Thus, Petitioner urges the Commission to modify the Sixth R&O by expressly adopting the principle that licensees assigned out-of-core DTV channels, particularly licensees of noncommercial stations and those with out-of-core NTSC channels as well, be compensated for the costs of moving their DTV operations to an in-core channel as a result of spectrum recovery.

**I. The Heavy and Unevenly Distributed Costs of Double Moves**

The Sixth R&O (§ 76) concentrates DTV assignments between channels 2 and 51 and presages the ultimate repacking of all DTV assignments to a core band of channels 2-46 or channels 7-51 when the transition to DTV is complete and some television spectrum is reallocated for other uses.<sup>2/</sup> For purely technical reasons, 362 stations were assigned DTV channels outside of the core band, variously defined; in 68 cases (if the core becomes channels 7-51) or in 89 cases (if the core becomes channels 2-46), licensees will operate *both* NTSC and DTV channels outside the core band. Sixth R&O § 84.

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<sup>2/</sup> In adopting the core-channel approach, the FCC rejected the proposals forwarded in the joint filing of 660 broadcast licensees (including five networks, four trade associations and the WGBH Educational Foundation) as well as numerous other broadcast stations. This proposal was to use channels 2-69 in an unbiased fashion during the transition to facilitate the most robust introduction of DTV with minimum disruption to the existing service; these parties had no objection to the recovery of 138 MHz of spectrum after the transition to DTV is complete. See Sixth R&O §§ 43-52; Broadcasters' Comments in MM Docket No. 87-268 (November 22, 1996); Comments of the Association of America's Public Television Stations in MM Docket No. 87-268 (November 22, 1996).

All stations with out-of-core DTV channel assignments face special burdens in making the transition to DTV as, over the next two to five years, they build DTV facilities that will then have to be replaced at the end of the transition. Making this "double move" will be burdensome enough for the stations that operate NTSC facilities in the core band and that may be able to move their DTV operations to the vacated NTSC channels. See Sixth R&O ¶ 84. But it will be far more burdensome for those stations, like WGBY, that have no toehold in the core band. And it will be yet more burdensome for noncommercial stations, like WGBY, that will have to go to the public a second time for funds to make the DTV conversion -- funds that it may be difficult to justify needing in appeals to the public.<sup>3/</sup>

*WGBY's Early Investments.* WGBY is reputed for its advanced technical know-how. The station has had a history of being an early adapter of new technology. For example, WGBY was the first in the market to fully automate its on-air operation so as to achieve an unusual degree of efficiency. Through good planning and good engineering, the automation was achieved at relatively low cost.<sup>4/</sup> WGBY has taken the same sophisticated approach to the conversion to digital broadcasting and, given its tradition of technical excellence, it was natural for WGBY to plan to be one of the first

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<sup>3/</sup> As the Commission has noted throughout this proceeding, "noncommercial licensees [will] face unique problems in their transition to DTV, particularly in the area of funding." Sixth R&O ¶ 101, citing to the Fourth Further Notice of Proposed Rule Making/Third Notice of Inquiry, 10 FCC Rcd. 10541, 10551-52 (1995).

<sup>4/</sup> At WGBY, everything from scheduling, traffic, the playing of interstitial material and programming is computer-operated. Scheduling and operations are now combined in one department, making the station even more efficient.

DTV stations in its market. In fact, WGBY-TV has been preparing for more than five years for DTV; it held a capital campaign, purchased equipment,<sup>5/</sup> solidified its relationship with one of the few DTV transmitter manufacturers, and otherwise took steps to roll out DTV early.<sup>6/</sup>

The station also has well-developed plans to use the DTV channel quickly and innovatively in the public interest. WGBY has been a trusted partner for teachers in the region for many years. Many of its plans for DTV are based on the expansion of the station's educational services. For example, one of the first uses will be for data transmissions to area schools. The station's engineers have been investigating the possibility of using a digital channel to download educational Web sites to a cluster of schools in western Massachusetts. If this wireless access proves feasible, this school cluster could serve as a model for other smaller market educational stations.

***Burdens of a Double Move.*** Sadly, the energy WGBY has invested in getting a head-start on DTV now means that the station and its public have more to lose and funding may be harder to come by if the station has to make a double move to transition to DTV. This is because WGBY and its public contributors have already begun to finance what they assumed was the one-time-only expense of conversion. The

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<sup>5/</sup> In 1990, when it was time to replace its NTSC transmitter, WGBY purchased a Comark IOT dual use transmitter because it could be converted to DTV more easily than could a conventional transmitter. This was an early investment of more than \$700,000 for which a Springfield-based capital campaign was undertaken.

<sup>6/</sup> The Commission has recognized the pioneering efforts of the public broadcasting community in general in experimenting with DTV. See Fifth Report and Order, MM Docket No. 87-268 (adopted April 3, 1997) ¶ 104.

Sixth R&O's requirement that WGBY make a double move has undermined the station's confidence that it can be a leader in DTV or, indeed, that it can make the transition to DTV at all until the end of its five-year construction deadline. Depending on the in-core channel that will be assigned to WGBY, available antenna technology, and other currently unknown factors, the cost of moving from channel 58 to an in-core channel could be as much as \$261,000.<sup>7/</sup> Contributors have already pitched in to support WGBY's preparations for DTV; they will be called on to do so again in the next several years.<sup>8/</sup> WGBY simply does not foresee being able to go back to these contributors a third time to fund the second DTV conversion. Therefore, it is likely that WGBY will wait as long as it can and go to its contributors just once for the entire sum that is required, thus delaying noncommercial DTV service for the Springfield-Hartford market.

**II. The Commission Should Assure Public Broadcasters that Funds Raised for DTV Double Moves Will Be Reimbursed and Take Other Reasonable Steps to Reduce the Burden These Stations Will Bear**

The FCC should make every effort to minimize the extra burdens and disruption that its core-channel approach imposes on stations, particularly stations with out-of-core NTSC facilities and noncommercial stations.

*Compensation.* As one measure to reduce the extra financial burden placed on these stations, the FCC should adopt the principle that broadcasters required to

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<sup>7/</sup> This figure, confirmed by WGBY engineers, was derived by the National Association of Broadcasters. It consists of the estimated costs of moving a DTV station from channel 58 to channel 30.

<sup>8/</sup> More than 70% of WGBY's funding comes from the local community.

undertake a double move will be compensated for the transfer to a third in-core channel after the transition.<sup>9/</sup> This compensation should be the responsibility of those licensees that bid or otherwise pay for licenses in the newly allocated non-core spectrum.

The FCC's Sixth Further Notice of Proposed Rulemaking looked favorably on a requirement that new entrants compensate broadcasters for the cost of relocating due to spectrum recovery.<sup>10/</sup> Furthermore, the Sixth R&O (§§ 80, 143) states that the FCC, in a separate proceeding to address the allocation of channels 60-69, "will also address whether to require compensation by new service providers to full service or low power operations for the displacement or relocation of such operations from channels 60-69." Plans to implement this compensation principle for *all* displaced stations are firmly rooted in the Commission's Emerging Technologies precedent.<sup>11/</sup> Just as PCS entrants were required to compensate the microwave incumbents PCS replaced and Mobile Satellite Service entrants will be required to guarantee payment to

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<sup>9/</sup> Broadcasters, including Petitioner, advocated this approach in comments to the Fourth Further Notice of Proposed Rulemaking/Third Notice of Inquiry, MM Docket No. 87-268, 10 FCC Rcd 10541 (1995). See Joint Broadcaster Comments at 29-30 (November 20, 1995). We reiterated this point in comments to the Sixth Further Notice. See Joint Broadcaster Comments at 13 (November 20, 1996).

<sup>10/</sup> Sixth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd 10968, ¶26 ("We also may consider requiring the new licensees to compensate broadcasters [in channels 60-69] for the cost of relocating to DTV channels in the core spectrum area. (This compensation, we anticipate, could also be available to broadcasters at channels 52-59 and 2-6 at a later date.) Thus this approach would minimize the impact of the spectrum recovery process on broadcasters and viewers").

<sup>11/</sup> See, e.g., Emerging Technologies, Fourth Report and Order, 9 FCC Rcd. 1943-44, 1948 (1994); Third Report and Order, 8 FCC Rcd 6589, 6602-04; First Report and Order, 7 FCC Rcd. 6886, 6890 (1992).

the incumbents they replace for all relocation expenses,<sup>12/</sup> so the newcomers to the television broadcast band should have the same responsibilities.<sup>13/</sup> But mere indications of favor from the Commission are not enough in this area. Such indications will not reassure WGBY's contributors. Instead, Petitioner seeks a firm commitment from the Commission that compensation for moves into the core band will be required.

*Channel Assignments.* There are other steps that the Commission should take to ensure that the second move to the core band is conducted with minimal disruption to the station and the public. Petitioner understands that the allotment/assignment of 1601 DTV channels was a monumentally complex task and some channel assignments will change in the coming months. In particular, we are aware that there are a number of coverage and interference problems in the Northeast and that the Commission will be asked to make adjustments in this area. Petitioner requests that, if and when changes are made to DTV channel assignments in the Northeast, WGBY's concerns be taken into account and the Commission reassign to WGBY an in-core channel if at all possible during the reconsideration phase.<sup>14/</sup> Given the current state of

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<sup>12/</sup> See In re. Amendment of Section 2.106 of the Rules to Allocate Spectrum at 2 GHz for Use by Mobile Satellite Services, 6 Comm. Reg. (P & F) 1025, ¶ 42 (1997).

<sup>13/</sup> The costs of moving a broadcast facility to an in-core channel could be reduced to the extent that the Commission assigned an in-core channel to a displaced licensee that was as close as possible to the channel assigned in the Sixth R&O (e.g., channel 51 in WGBY's case), provided that such channel were technically adequate. Noncommercial stations, for whom the costs will be most burdensome, should be given special consideration when in-core channels are assigned.

<sup>14/</sup> In addition to the out-of-core problem, WGBY has other concerns about the DTV channel it has been assigned. Appendix B to the Sixth R&O predicts that WGBY will lose 8.3% of its NTSC service area due to new interference from DTV stations. This is  
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flux and the scarcity of unassigned DTV channels in the Springfield-Hartford area, Petitioner refrains from requesting a specific alternative in-core DTV channel assignment for WGBY at this time.

Going forward, the Commission should give special consideration to WGBY and similarly situated stations as DTV channel assignments are changed and channels become available for reassignment. Petitioner respectfully requests the Commission, on reconsideration, to announce that stations with out-of-core NTSC and DTV channels will be entitled to be "first in line" to move to technically appropriate channels within the core as such channels open up if, for example, licensees do not participate in the conversion or do not construct their facilities on time.

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While details about the compensation scheme proposed above and other aspects of the double move may be left to a later date, Petitioner respectfully submits that it is fundamentally unfair for the FCC to postpone the adoption of the basic reimbursement principle. The Commission's silence on this point creates distinctions between various classes of eligible broadcasters and requires those like WGBY to accept DTV channels outside the core band knowing that many of the investments it makes (largely with the public's funds) will be wasted. Assurance that these broadcasters will be compensated for the reasonable expenses of being relocated to the core band will help

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<sup>14/</sup>(...continued)

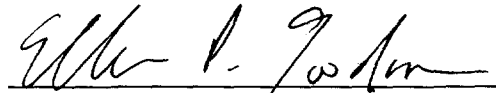
significant in and of itself, but is particularly troublesome when compared with the NTSC service losses of the other two Springfield stations (6.7% and 2.6%). Petitioner urges the Commission to reduce both the loss of NTSC service and the disparity with WGBY's competitors if at all possible in reassigning channels in the region.



to accelerate the transition to DTV and ensure that small-market noncommercial stations like WGBY are able to provide their communities with DTV quickly and efficiently. Petitioner urges the Commission to take these steps forthwith before all the other, more complex, reconsideration issues bog down the process and new Commissioners take their seats. The issues described above can be resolved easily and simply by changing the language in the Sixth R&O.

Respectfully submitted,

WGBH EDUCATIONAL FOUNDATION

A handwritten signature in dark ink, appearing to read "Jonathan D. Blake", is written over a horizontal line.

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